

ORIGINAL

RECEIVED

CC Docket No. 97-211

JUN 18 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

WorldCom and MCI have asked the Commission to preclude two of Bell Atlantic's in-house lawyers – Edward Young and John Thorne – from reviewing documents subject to the Protective Order released June 5, 1998. This request should be promptly denied. The motion would deprive Bell Atlantic of the two centrally responsible senior attorneys representing its interests in this proceeding, and neither Mr. Young nor Mr. Thorne falls within the Commission's clearly articulated disqualification standard – a standard that rejects a general bar on in-house lawyers and instead draws a line that distinguishes the normal lawyer's role from the role of a business person (who happens to be a lawyer) for whom information about competitors would factor into business decisions. Because Mr. Young and Mr. Thorne act well within the normal lawyer's role, their promises of confidentiality are sufficient under the Protective Order to prevent its misuse.

Under paragraph 3 of the Protective Order, in-house counsel are barred only if they are “involved in competitive decision-making,” that is, their relations with their client “involve counsel’s advice and participation in any or all of the client’s business decisions made in light of

No. of Copies rec'd  
List A B C D E

0210

similar or corresponding information about a competitor.” This standard applies only if a particular in-house lawyer goes beyond giving legal advice relevant to business decisions (which is intrinsic to the lawyer’s role) and instead contributes to the competitive aspects of business decisions – what product designs, prices, marketing plans, etc., would be most advantageous competitively. As the attached declarations of Mr. Young and Mr. Thorne attest, neither one of them crosses that line. Bell Atlantic relies on them for legal analysis (including regulatory analysis) and litigation – just as it relies on its outside lawyers – and does not turn to either one of them for economic, competitive analysis of product-design, pricing, marketing, etc., options. These declarations are determinative of the issue: they are lawyers, not business people, and the signed pledges of confidentiality will protect the information at issue from competitive misuse.

WorldCom and MCI, of course, make no allegation that Mr. Young or Mr. Thorne have any record whatever of violating prior confidentiality orders under which they have reviewed documents. Instead, they suggest that Mr. Young and Mr. Thorne do not function as lawyers but as business officers. These suggestions are baseless.

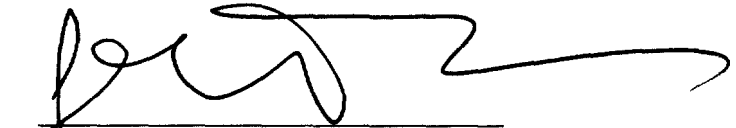
Most seriously, as to Mr. Young, they note that, three years ago, an article reported that he oversaw “‘68 nonlawyers, whose functions include[d] the complex processes of setting prices.” See WorldCom/MCI Objection at 3. But even that role did not make him a competitive decisionmaker, because the referred-to nonlawyers were simply the tariff-filing staff of Bell Atlantic, whose job was to translate the competitive pricing decisions of business people into legally proper tariffs. And, in any event, as Mr. Young attests in his declaration, he no longer oversees that function within Bell Atlantic.

Less seriously, but more pervasively, WorldCom and MCI quote several sources indicating that Mr. Young and Mr. Thorne are “involved in” important company decisions and “work closely with” the business side of the company. WorldCom/MCI Objection at 3, 4. Those facts, however, lend no support to the contention that the “competitive decision-making” line has been crossed. A competent lawyer, in giving legal advice, is “involved in” business decisions and “work[s] closely” with the business people who are his or her clients; and for a heavily regulated company like Bell Atlantic, legal advice is very frequently important to company decisions. What matters under the Commission’s standard is what role the lawyer plays, not how large a role the lawyer plays, in company decisions. Mr. Young and Mr. Thorne perform important legal roles, not competitive decision-making roles, and therefore fall outside the Protective Order’s rule precluding certain in-house counsel from access to protected documents.

By way of comparison, in the Bell Atlantic/NYNEX merger, senior in-house counsel at both MCI and AT&T were permitted to review and file written comments about Bell Atlantic’s most competitively-sensitive and confidential documents. MCI’s in-house counsel who signed MCI’s brief in that proceeding was Lisa B. Smith, who according to her attached biography “plays a key role in the development of strategic policy for MCI’s entry into the local telephone market ....” See <http://www.nsu.edu/events/conference97/bios/htm>. AT&T’s Vice President for Law and Public Policy, Mark Rosenblum, who had full access to Bell Atlantic’s documents in order to prepare AT&T’s brief in that proceeding, performs a similar role at AT&T and often serves as the company’s spokesperson. By contrast, neither Mr. Young nor Mr. Thorne perform competitive decision-making roles at all.

The request of WorldCom and MCI to bar Mr. Young and Mr. Thorne from access to documents should be denied.

Respectfully submitted,



---

John Thorne  
Edward D. Young, III  
Bell Atlantic Corp.  
1320 North Courthouse Road  
Arlington, VA 22201  
703 974-1600

June 18, 1998

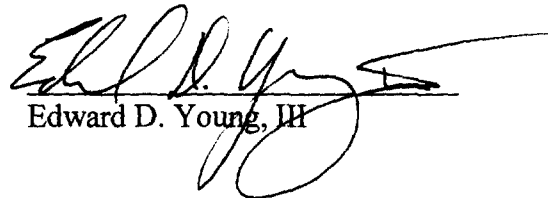
3. I act as a lawyer in and for the company, not as a business officer. In particular, I work “with” the business side of the company, as all lawyers work with their clients, in that I provide

legal advice (in my case, about regulatory issues) to business people in the company. But Bell Atlantic makes its business decisions about what products, prices, marketing strategies, etc., are most competitively advantageous without my analyzing or contributing information, or playing a decisionmaking role, on those competitive business issues. The business people in the company perform those functions.

4. For those reasons, I do not come within the standard of involvement in “competitive decision-making” as the Commission articulated it in its Order Adopting Protective Order, dated June 5, 1998, at ¶ 5.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 17, 1998.

  
Edward D. Young, III

**Before the  
Federal Communications Commission  
Washington, DC 20554**

**In the Matter of**

**Application of WorldCom, Inc.  
and MCI Communications Corp.  
for Transfer of Control of MCI  
Communications Corp. to  
WorldCom, Inc.**

**CC Docket No. 97-211**

**DECLARATION OF JOHN THORNE**

1. I, John Thorne, make this declaration in response to the Joint Objection of WorldCom, Inc. and MCI Communications Corp. to Disclosure of Stamped Confidential Documents (dated June 12, 1998), requesting that I be precluded from reviewing documents covered by the Protective Order released in this proceeding on June 5, 1998.

2. My title at Bell Atlantic is Senior Vice President & Deputy General Counsel. My job is to provide legal representation and advice relating to court and regulatory proceedings that affect the interests of Bell Atlantic. My principal duties are to write briefs and argue cases involving antitrust, regulatory, and intellectual property issues. For example, I wrote most of the briefs Bell Atlantic has filed in connection with WorldCom/MCI merger. I have no non-lawyers reporting directly or indirectly to me other than a legal secretary and several paralegals.

3. I function as a lawyer in and for the company, not as a business officer. In particular, I work "with" the business side of the company, as all lawyers work with their clients, in that I provide legal advice and representation to business people in the company. But Bell Atlantic makes its business decisions about what products, prices, marketing strategies, etc., are most

competitively advantageous without my analyzing or contributing information, or playing a decisionmaking role, on those competitive business issues. The business people in the company perform those functions.

4. For those reasons, I do not come within the standard of involvement in “competitive decision-making” as the Commission articulated it in its Order Adopting Protective Order, dated June 5, 1998, at ¶ 5.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 18, 1998.



John Thorne

**LISA B. SMITH**

**Senior Policy Counsel MCI Communications Corporation**

**Lisa Smith** is Senior Policy Counsel, Local Markets and Enforcement for MCI Communications Corporation. In this capacity Ms. Smith plays a key role in the development of strategic policy for MCI's entry into the local telephone market and the development and implementation of enforcement strategies at the Federal Communications Commission.

Prior to joining MCI in June, 1996, Ms. Smith was Senior Legal Advisor to FCC Commissioner Andrew Barrett. In this position she advised and assisted the Commissioner in formulating and implementing regulatory policy regarding broadcasting, cable television and wireless technologies.

Before joining the FCC, Ms. Smith worked in the private sector. From 1989 to 1993 she was a Senior Associate at Smith, Don, Alampi & D'Argenio where she specialized in cable law and worked on corporate litigation matters. Ms. Smith spent the two previous years at Paragon Cable Manhattan, where she ensured that company policy complied with federal, state and local regulations.

Ms. Smith graduated from Wesleyan University with a B.A. in English and Government. She received her J.D. from Rutgers University, and is a member of the Federal Communications Bar Association and the National Bar Association.

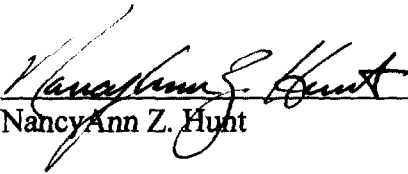
---

***Registration  
and Fees*** ♦ ***Calendar  
of Events*** ♦ ***Speaker  
Biographies*** ♦ ***Conference  
Homepage***

---

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 18<sup>th</sup> day of June, 1998, I mailed a copy of the foregoing Opposition of Bell Atlantic to Joint Objection by first class mail, postage prepaid, unless otherwise indicated, to the attached list of people.

  
Nancy Ann Z. Hunt

**\*HAND DELIVERED**

**Chairman William E. Kennard\***  
Federal Communications Commission  
1919 M Street, NW  
Room 814  
Washington, DC 20554

**Commissioner Susan Ness\***  
Federal Communications Commission  
1919 M Street, NW  
Room 832  
Washington, DC 20554

**Commissioner Harold Fuchtgott-Roth\***  
Federal Communications Commission  
1919 M Street, NW  
Room 802  
Washington, DC 20554

**Commissioner Michael Powell\***  
Federal Communications Commission  
1919 M Street, NW  
Room 844  
Washington, DC 20554

**Commissioner Gloria Tristani\***  
Federal Communications Commission  
1919 M Street, NW  
Room 826  
Washington, DC 20554

**Magalie Roman Salas\***  
Federal Communications Commission  
1919 M Street, NW  
Room 222  
Washington, DC 20554

**John T. Nakahata, Chief of Staff\***  
Office of the Chairman  
Federal Communications Commission  
1919 M Street, NW  
Room 814  
Washington, DC 20554

**Kathryn C. Brown, Chief\***  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW  
Room 500  
Washington, DC 20554

**Regina M. Keeney, Chief\***  
International  
Federal Communications Commission  
2000 M Street, NW  
Room 800  
Washington, DC 20554

**Daniel B. Phythyon, Chief\***  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, NW  
Room 5002  
Washington, DC 20554

Thomas C. Powers\*  
Office of the Chairman  
Federal Communications Commission  
1919 M Street, NW  
Room 814  
Washington, DC 20554

James Casserly\*  
Office of Commissioner Ness  
Federal Communications Commission  
1919 M Street, NW  
Room 832  
Washington, DC 20554

Kyle Dixon\*  
Office of Commissioner Powell  
Federal Communications Commission  
1919 M Street, NW  
Room 844  
Washington, DC 20554

Paul Gallant\*  
Office of Commissioner Tristani  
Federal Communications Commission  
1919 M Street, NW  
Room 826  
Washington, DC 20554

Kevin Martin\*  
Office of Commissioner Furchtgott-Roth  
Federal Communications Commission  
1919 M Street, NW  
Room 802  
Washington, DC 20554

Lawrence Strickling, Chief\*  
Competition Division  
Office of the General Counsel  
Federal Communications Commission  
1919 M Street, NW  
Room 658  
Washington, DC 20554

Rebecca L. Dorch\*  
Competition Division  
Office of General Counsel  
Federal Communications Commission  
1919 M Street, NW  
Room 832  
Washington, DC 20554

Janice Myles\*  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW  
Room 544  
Washington, DC 20554

International Reference Room\*  
International Bureau  
Federal Communications Commission  
2000 M Street, NW  
Room 102  
Washington, DC 20554

Wireless Reference Room\*  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, NW  
Room 5608  
Washington, DC 20554

International Transcription Service, Inc.\*  
2100 M Street, NW  
Suite 140  
Washington, DC 20037

Richard E. Wiley  
R. Michael Senkowski  
Jeffery S. Linder  
Robert J. Butler  
WILEY, REIN & FIELDING  
1776 K Street, NW  
Washington, DC 20006

Michelle Carey\*  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW  
Room 544  
Washington, DC 20554

Ramsey Woodworth  
Robert M. Gurss  
Rudolph Geist  
Wilkes, Artis, Hedrick & Lane  
1666 K Street, NW, Suite 1100  
Washington, DC 20006

William Barfield  
Jonathan Banks  
BellSouth Corp.  
Suite 1800  
1155 Peachtree Street, NE  
Atlanta, Georgia 30309-3610

George Kohl  
Senior Executive Director, Research and  
Development  
Communications Workers of America  
501 3<sup>rd</sup> Street, NW  
Washington, DC 20001-2797

John J. Sweeney  
President  
American Federation of Labor and  
Congress of Industrial Organizations  
815 16<sup>th</sup> Street. Mw  
Washington, DC 20006

Janice Mathis  
General Counsel  
Rainbow/PUSH Coalition  
Thurmond, Mathis & Patrick  
1127 W. Hancock Avenue  
Athens, GA 30603

David Honig  
West Coast Valet Service  
3636 16<sup>th</sup> Street, NW, #B-366  
Washington, DC 20010

Matthew R. Lee, Esq.  
Executive Director  
Inner City Press/Community on the Move &  
Inner City Public Interest Law Project  
1919 Washington Ave  
Bronx, NY 10457

Charles Helein  
Helein & Associates  
8180 Greensboro Drive  
Suite 700  
McLean, Virginia 22102

Office of the Chief\*  
Network Services Division  
Federal Communications Commission  
2000 M Street, NW  
Room 235  
Washington, DC 20554

Sue Ashdown  
Coalition of Utah Independent Internet  
Service Providers  
Xmission  
51 E. 400 S. Suite 200  
Salt Lake City, Utah 84111

Anna M. Gomez, Deputy Chief\*  
Network Services Division  
Common Carrier Bureau  
Federal Communications Commission  
2000 M St., N.W., Room 235  
Washington, DC 20554

James Love  
Consumer Project on Technology  
P.O. Box 19367  
Washington, DC 20036

Greg Cooke\*  
Common Carrier Bureau  
Federal Communications Commission  
2000 M St., N.W., Room 235  
Washington, DC 20554

Barbara O'Connor  
Donald Vial  
Maureen Lewis  
The Alliance for Public Technology  
901 Fifteenth St., NW, Suite 230  
Washington, DC 20005

Alan Y. Naftalin  
Gregory C. Staple  
R. Edward Price  
Koteen & Naftalin, LLP  
1150 Connecticut Avenue, NW  
Washington, DC 20036

Melissa Waksman\*  
Office of Commissioner Furchtgott-Roth  
Federal Communications Commission  
1919 M St., N.W., Room 802  
Washington, DC 20554

Mitchell Lazarus  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, Virginia 22209

Kent Nilsson, Deputy Chief\*  
Network Services Division  
Common Carrier Bureau  
Federal Communications Commission  
2000 M St., N.W., Room 235  
Washington, DC 20554

Mark C. Rosenblum  
Aryeh S. Friedman  
AT&T Corporation  
295 North Maple Avenue  
Room 3252G3  
Basking Ridge, NJ 07920

Terrence J. Ferguson  
Level 3 Communications, Inc.  
3555 Farnam Street  
Omaha, Nebraska 68131

Kathleen McManus Trafford  
Porter, Wright, Morris & Arthur  
41 South High Street  
Columbus, Ohio 43215

Eric J. Henberg  
NetSet Internet Services, Inc.  
3966 Brown Park Drive, Suite E  
Hilliard, Ohio 43206

Deborah Howard  
Internet Service Providers Consortium  
c/o Lockridge, Grindal, Mauen & Holstein,  
P.L.L.P.  
100 Washington Avenue South  
Suite 2200  
Minneapolis, Minnesota 55401

Rodney L. Joyce  
Shook, Hardy & Bacon L.L.P.  
801 Pennsylvania Avenue, NW  
Suite 600  
Washington, DC 20004

Laurel I. Sturm  
Fiber Network Solutions, Inc.  
6800 Lauffer Road  
Columbus, Ohio 43231

David Holub  
100 Apartment B Edgewood Avenue  
San Francisco, California 94117

Susan E. Brown  
Latino Issues Forum  
785 Market Street, 3<sup>rd</sup> Floor  
San Francisco, CA 94103

Andrew Jay Schwartzman  
Gigi B. Sohn  
Joseph S. Paykel  
Media Access Project  
Suite 400  
1707 L Street, NW  
Washington, DC 20036

Thomas A. Hart, Jr.  
M. Tamber Christian  
Amy E. Weissman  
Shook, Hardy & Bacon  
801 Pennsylvania Ave., NW  
Washington, DC 20004

Leon M. Kestenbaum  
Jay C. Keithley  
Michael B. Fingerhut  
Sprint Corporation  
1850 M Street, NW, 11<sup>th</sup> Floor  
Washington, DC 20036

Robert Gnaizda  
Itzel D. Berrio  
The Greenlining Institute  
785 Market, 3<sup>rd</sup> Floor  
San Francisco, CA 94103

Michael H. Salsbury  
Mary L. Brown  
Larry A. Blosser  
MCI Communications Corp.  
1801 Pennsylvania Ave., NW  
Washington, DC 20006

Anthony C. Epstein  
John B. Morris  
Ian H. Gershengorn  
Jenner & Block  
601 13<sup>th</sup> Street, NW  
Washington, DC 20005

Andrew D. Lipman  
Jean L. Kiddoo  
Michael W. Fleming  
Swidler & Berlin, Chartered  
3000 K Street, NW  
Suite 300  
Washington, DC 20007

Catherine R. Sloan  
Robert S. Koppel  
WorldCom Inc.  
1120 Connecticut Ave, NW  
Washington, DC 20036